

Readopt with amendment Ins 2900, effective 10-29-99 (Document #7111), to read as follows:

CHAPTER Ins 2900 HAZARDOUS FINANCIAL CONDITIONS, LICENSED COMPANIES

Statutory Authority: RSA 400-A:15, I.

PART Ins 2901 REGULATION OF COMPANIES DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION

Ins 2901.01 Purpose.

(a) The purpose of this chapter is to set forth **[basic] the** standards which the commissioner **[shall]** **may** use **[in] for** identifying insurers **found to be in such [whose financial]** condition **[is such]** as to render the continuance of their business **[in this state as]** hazardous to **the public or to holders of their policies or certificates of insurance** **[their policyholders, certificateholders and the general public]**.

(b) **This chapter shall not be interpreted to limit the powers granted the commissioner by any laws or parts of laws of this state, nor shall this chapter be interpreted to supercede any laws or parts of laws of this state.**

Ins 2901.02 Standards. **The following standards, either singly or a combination of two or more, may be considered by the commissioner to determine whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous to the policyholders, creditors or the general public. The commissioner may consider:**

(a) **Adverse findings reported in financial condition and market conduct examination reports;**

(b) **The National Association of Insurance Commissioners Insurance Regulatory Information System and its related reports;**

(c) **The ratios of commission expense, general insurance expense, policy benefits and reserve increases as to annual premium and net investment income that could lead to an impairment of capital and surplus;**

(d) **The insurer's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity or diversity to assure the company's ability to meet its outstanding obligations as they mature;**

(e) **The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;**

(f) **Whether the insurer's operating loss in the last 12 month period or any shorter period of time, including but not limited to net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders, is greater than 50 percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required;**

(g) **Whether any affiliate, subsidiary or reinsurance is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations;**

(h) Contingent liabilities, pledges or guarantees which either individually or collectively involve a total amount in which the opinion of the commissioner may affect the solvency of the insurer;

(i) Whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to the insurer;

(j) The age and collectibility of receivables;

(k) Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position;

(l) Whether the management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

(m) Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;

(n) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

(o) Whether the company has experienced or will experience in the foreseeable future cash flow or liquidity problems.

Ins 2901.03 Commissioner's Authority.

(a) For the purposes of making a determination of an insurer's financial condition under this chapter, the commissioner may:

(1) Disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired or otherwise subject to a delinquency proceeding;

(2) Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries or affiliates;

(3) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor;

(4) Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12 month period.

[Ins 2901.02 Action on Hazardous Company. Continued operation of an insurer licensed to transact business in this state that is hazardous to the policyholders or the general public, based on the criteria detailed in Ins 2901.03, shall be, after notice and hearing as required by RSA 402-C:11, subject to an order requiring the insurer to:]

(b) If the commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to the policyholders or the general public, then the commissioner may, upon a determination, issue an order requiring the insurer to:

[(a)] (1) Reduce the total amount of present and potential liability for policy benefits by reinsurance;

[(b)] (2) Reduce, suspend or limit the volume of business being accepted or renewed;

[(c)] (3) Reduce general insurance and commission expenses by specified methods;

[(d)] (4) Increase the insurer's capital and surplus;

[(e)] (5) Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;

[(f)] (6) File reports in a form acceptable to the commissioner concerning the market value of an insurer's assets;

[(g)] (7) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;

[(h)] (8) Document the adequacy of premium rates in relation to the risks insured; [or]

[(i)] (9) File, in addition to regular annual statements, interim financial reports pursuant to RSA 400-A:36 IV.

If the insurer is a foreign insurer the commissioner's order may be limited to the extent provided by statute.

(c) An insurer subject to an order under (b) above may request a hearing to review that order. The notice of hearing shall be served upon the insurer pursuant to RSA 400-A:17. The notice of hearing shall state the time and place of hearing, and the conduct, condition or ground upon which the commissioner based the order. Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not less than 10 days nor more than 30 days after notice is served and shall be conducted at the insurance department. The commissioner shall hold all hearings under this subsection privately, unless the insurer requests a public hearing in which case the hearing shall be public.

Ins 2301.04 Judicial Review. Any order or decision of the commissioner shall be subject to review in accordance with RSA 541-A at the instance of any party to the proceedings whose interests are substantially affected.

[Ins 2901.03 Criteria for Determination. The criteria to be applied in Ins 2901.02 above includes:

(a) Adverse findings reported in financial condition and market conduct examination reports;

(b) Unusual operating ratios as determined by the National Association of Insurance Commissioners Insurance Regulatory Information System and its related reports;

(c) The ratios of commission expense, general insurance expense, policy benefits and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus;

(d) The insurer's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;

(e) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

(f) The insurer's operating loss in the last 12 month period or any shorter period of time, including but not limited to net capital gain or loss, change in nonadmitted assets, and cash dividends paid to shareholders, is greater than 50% of such insurer's remaining surplus as regards policyholders in excess of the minimum required;

(g) Whether any affiliate, subsidiary or reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations;

(h) Contingent liabilities, pledges or guarantees which either individually or collectively involve a total amount which shall affect the solvency of the insurer;

(i) Whether any person controlling the insurer as defined in RSA 401-B:1, III, is delinquent in the transmitting to, or payment of, net premiums to such insurer;

(j) The age and collectibility of receivables;

(k) Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operations of such insurer fails to possess and demonstrate the competence, experience and integrity necessary to serve the insurer in such position;

(l) Whether management of an insurer has failed to respond to inquiries by the commissioner relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

(m) Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released false or misleading financial statements to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;

(n) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

(o) Whether the company has experienced or will experience in the foreseeable future cash flow and/or liquidity problems;

(p) Whether any credit or amount receivable results from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding;

(q) Whether asset value adjustments attributable to investments in or transactions with parents, subsidiaries, or affiliates have been made;

(r) Whether the stated value of accounts receivable is over-stated, if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor;

(s) The insurer will be called upon to meet obligations undertaken within the next 12 month period for the insurer's liability for any contingent liability, pledge, or guarantee not reported or inadequately valued.

(t) The insurer's risk based capital is at or below the company action level pursuant to RSA 404-F:1.]

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